

FERNANDE BODNER, et al.,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

BANQUE PARIBAS, et al.,

Defendants.

ANNE-MARIE BENISTI, et al.,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

BANQUE PARIBAS, et al.,

Defendants.

PRELIMINARY STATEMENT

The United States respectfully submits this Statement of Interest for the purpose of attending to the interests of the

United States in connection with these actions.¹ Through this statement, the United States expresses both its foreign policy interests with regard to the efforts undertaken by the Government of France and various banks to establish institutions to make payments to individuals with claims against banks arising from their activities in France during World War II, and the public interest in the cooperative resolution of claims for restitution and compensation arising out of the Nazi era. In this statement, the United States takes no position on the merits of the underlying legal claims or arguments advanced by plaintiffs or defendants. Of course, the Court need not resolve these legal issues in the context of a voluntary dismissal, so long as the requirements of Federal Rule of Civil Procedure 23(e) are met. In sum, because of the United States' strong interests in the success of the French efforts, and because such success is predicated on the dismissal of this litigation, the United States recommends dismissal on any valid legal ground.

BACKGROUND

¹ "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

1. United States Policy on Holocaust Claims

The policy of the United States Government with regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is motivated by the twin concerns of justice and urgency. See Declaration of Stuart E. Eizenstat ("Eizenstat Decl."), attached as Exh. 1, ¶¶ 3, 30. No price can be put on the suffering that the victims of Nazi atrocities endured. But the moral imperative remains to provide some measure of justice to the victims of the Holocaust, and to do so in their remaining lifetimes. Id. ¶ 3. Today, more than 55 years after the Holocaust, the survivors are elderly and are dying at an accelerated rate. Id. ¶ 30. The United States believes, therefore, that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation. Id. ¶ 3.

The framework now in place in France - a compensation commission and a memory foundation, both established by decrees of the French Government, and a supplemental fund created by the banks - in favor of which all parties now seek to have this

litigation dismissed, is consistent with and in part the result of this United States policy. Id. ¶¶ 29-31. This Statement sets forth the history of the creation of these institutions and the negotiations that brought the parties to this point, a description of the operation of these institutions and the benefits available through them, and the basis for the United States' conclusion that it would be in the United States' interests for these institutions to be the exclusive remedy for all claims against the defendant banks arising from their activities in France during World War II.

2. Background to the Negotiations

The background to the negotiations that led to the motions currently pending before the Court encompasses three sets of simultaneous developments: the activities of the Government of France, the activities of attorneys representing plaintiffs in these cases, and the activities of the United States Government. In 1995, President Jacques Chirac of France publicly recognized France's unremitting debt to the victims of the German occupation and the Vichy Regime in France, and pledged that the French Government would take efforts to address all remaining vestiges of that period. One of those efforts was the creation, in January 1997, of the Study Mission on the Spoliation of Jews

in France, known as the "Mattéoli Mission," the aim of which was to study the conditions under which property belonging to Jews in France was confiscated by the occupying Nazi forces and Vichy authorities during the period 1940-1944. Eizenstat Decl. ¶ 6.

In April 2000, the Mattéoli Mission issued a 3,000 page report detailing various types of property spoliation that occurred and attempting to quantify the extent of such spoliation. See Summary of the Work by the Study Mission on the Spoliation of Jews in France ("Mattéoli Report"), available at www.info-france-usa.org/wchea/matteoli.pdf. With respect to banking assets, the Mattéoli Mission found that approximately 56,400 people, holding approximately 80,000 bank accounts, were deprived, either temporarily or permanently, of over seven billion francs in assets. Id. at 25. While it was able to determine that some of that amount was restituted, the fate of significant portions of the spoliated bank assets remains unknown. Eizenstat Decl. ¶ 6.

The Mattéoli Mission made several recommendations for addressing these deprivations, two of which are particularly relevant here. First, it recommended creation of a commission to hear claims by individuals who lost property or are heirs to

those who lost property that was never restituted.² That commission, the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti-Semitic Laws in Force During the Occupation ("Drai Commission"), was established by a decree of the French Government in September, 1999. Second, it recommended the creation of a foundation to support Holocaust education and memory and to provide financial support to victims of persecution and their families. That foundation, the Foundation for Memory of the Shoah ("Foundation"), was established by a decree of the French Government in December 2000. Id. ¶ 7.

Meanwhile, in December 1997 and again in December 1998, attorneys representing individuals with World War II era claims against French and other banks filed these class action lawsuits seeking to, among other things, recover assets alleged to have been improperly retained by the banks during and subsequent to World War II. On August 31, 2000, this Court denied a motion to dismiss the cases. See Bodner v. Banque Paribas, 114 F. Supp.2d 117 (E.D.N.Y. 2000).

² This recommendation was actually part of an earlier, interim report of the Mattéoli Mission. See Mattéoli Report at 6.

Simultaneously, from the Fall of 1998 through the Summer of 2000, former Deputy Secretary of the Treasury Stuart E. Eizenstat led an inter-agency United States Government team that facilitated negotiations leading to a resolution of class action lawsuits filed in U.S. courts against German companies arising from slave and forced labor and other wrongs by those companies during the Nazi era. Those negotiations resulted, in July 2000, in the creation of a German Foundation, "Remembrance, Responsibility, and the Future," to make payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era. Eizenstat Decl. ¶ 9.

While the German negotiations were proceeding, Eizenstat also led an inter-agency United States Government team facilitating similar talks revolving around the role of the Republic of Austria and Austrian companies in the Nazi era and World War II. In October, 2000, those talks resulted in the creation of an Austrian Fund ("Reconciliation, Peace, and Cooperation") to make payments to those who worked as slave and forced laborers on the present day territory of the Republic of Austria. Id. ¶ 10.³

³ Subsequently, in January 2001, agreement was reached on the creation of a second Austrian fund - the General Settlement Fund

Subsequent to the conclusion of the German negotiations, Eizenstat was approached separately by the French Government and by attorneys representing individuals with claims against banks doing business in France during World War II. Each sought U.S. Government assistance in facilitating resolution of the pending class action litigation against French and other banks, drawing on precedents established in the German and Austrian negotiations. Id. ¶ 11. Attorneys representing the banks welcomed U.S. Government assistance as well.

3. The Negotiations and Resolution

Negotiations among the Government of France, attorneys representing the banks, and attorneys representing claimants against the banks in these lawsuits commenced in November 2000 with a set of meetings in Washington, D.C. Subsequent meetings were held in December in Washington, in January 2001 in Paris, France, and on January 17-18 in Washington. The participants also included representatives of the Simon Wiesenthal Center of Paris, the Conseil Représentatif des Institutions Juives de France ("CRIF"), an umbrella organization of French Jewish groups, and the Alliance Israelite Universelle. Through these

- to make payments to those who suffered loss of or damage to property during the Nazi era and World War II on the present day territory of the Republic of Austria.

participants and the plaintiffs' attorneys, the victims' interests were broadly and vigorously represented. Id. ¶ 12.

The negotiations centered on the question of whether the existing institutions created by the French - the Drai Commission and Foundation - could sufficiently ensure fair compensation for those who suffered losses relating to banking assets or property held by banks in France during the Holocaust. At the outset, the parties were far apart on both this question, and on the amount of money necessary to provide such compensation. Id. ¶ 13.

One of the key issues for the attorneys representing the victims was to establish a mechanism for compensation to those people who, despite the impressive and exhaustive historical work of the Mattéoli Mission, could not point to specific evidence of the existence and/or disposition of their or their families' banking assets. Although the Drai Commission makes compensation awards to claimants on very relaxed standards of proof, the attorneys maintained that there could be no guarantee that all victims would receive some measure of justice. Id. ¶ 14.

At a negotiating session that lasted well into the night of January 8-9, 2001, the parties reached a major breakthrough. In addition to maintaining their commitment to pay all well-documented, banking-related claims decided by the Draï Commission, the banks agreed to create a supplemental fund (the "Fund"), which would make payments to people with little or no documentation of their claims. In return, the plaintiffs, through their attorneys, agreed that they would voluntarily dismiss with prejudice all lawsuits currently pending against the banks. Agreements on the details of these mechanisms, and the amounts of money necessary to fund them, were reached after an all-night session on January 17-18. Id. ¶ 15.

On January 18, 2001, the parties to the negotiations gathered in Washington to sign a Joint Statement concluding the negotiations, and expressing their support for the Fund, the Draï Commission, and the Foundation. See Eizenstat Decl. Exh. A. On the same day, the United States and France signed an Executive Agreement, in which France committed that the operation of the Fund, the Draï Commission, and the Foundation would be governed by principles agreed by the parties to the negotiations, and the United States committed to take certain

steps to assist the banks⁴ in achieving "legal peace" in the United States for claims arising out of their activities in France during World War II. See Eizenstat Decl. Exh. B. The Executive Agreement entered into force upon an exchange of notes between the Governments of the United States and France on February 5, 2001. See Exh. 2.

The role played by the United States in this negotiation was that of a facilitator. The Executive Agreement is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of the United States' participation was to bring together the victims' constituencies on one side and the French Government and banks on the other, to bring expeditious justice to the widest possible population of survivors and heirs, and to help facilitate legal peace. Among these parties, the United States facilitated the essential

⁴ The term "banks" in the context of the Agreement includes French and certain non-French banks. The word "Banks" is defined to include all banks that are defendants in these cases and other litigation over World War II era activities, to the extent those activities occurred in France, as well as all banks that are members of the Association Française des Établissements de Crédit et des Entreprises d'Investissement, a French bank trade association, and other financial institutions that receive deposits. See Executive Agreement (Eizenstat Decl. Exh. B), at Annex A.

arrangement by which the French side would establish the Fund, and make certain enhancements to the Draï Commission and Foundation, to compensate those who suffered losses relating to banking assets in France during World War II, and the class action representatives in pending United States litigation agreed to give up their claims. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the Fund, the Draï Commission, and the Foundation being treated as the exclusive remedies for Holocaust-related claims against banks active in France during World War II, and, concomitantly, in current and future litigation being dismissed.

4. The French Institutions

Taken together, the Fund, the Draï Commission, and the Foundation are intended to accomplish a complete disgorgement of assets never restituted to their rightful owners by the French Government, banks, and other financial institutions, and any resulting unjust enrichment, and will result in compensation to persons who suffered losses relating to banking assets in France during World War II. Eizenstat Decl. ¶ 18.

The Draï Commission will operate as follows. It will undertake a program to publicize world-wide its existence and

the availability of its claims procedure and to make its forms and application procedures easily available to claimants at no cost to them. It will also cooperate with organizations representing victims to ensure that potential claimants have knowledge of and access to the Draï Commission. In addition, it will set up offices or contact centers in the United States, in Israel, and in any other countries in which a significant number of potential claimants live, to allow claimants to contact the Draï Commission and make their claims without travel to France. Id. ¶ 19.

The Draï Commission will investigate and consider all claims by any person for compensation for any bank or financial institution doing business in France during World War II and, if an account can be verified, determine the amount designed to compensate fully the claimants for any material damages. It will do so based on relaxed standards of proof. It can recognize as sufficient to authorize payment any of various standards of evidence, including not only proof but also presumptions, indications, and even the "intimate conviction" of the Commission. Claimants can be represented by counsel or others at every stage of the process, and need not personally appear. Id. ¶ 20.

Once the Drai Commission determines an award should be made, it will refer that award to the banks. There is no monetary limit on such awards. The banks have committed, in writing, to make full and prompt payment of all banking-related awards recommended by the Drai Commission, at current value, regardless of the eventual total amount. As good faith evidence of that commitment, the banks agreed during the negotiations to establish an escrow account, initially capitalized at \$50 million and to be replenished so as to ensure the amount in the account never falls below \$25 million, to be used to promptly pay all banking-related Drai Commission awards. Id. ¶ 21.

The Drai Commission has agreed to establish an appeals process. Claimants whose claims are decided by a panel of commission members are entitled to appeal to the full commission, while those whose claims are decided in the first instance by the full commission will be entitled to seek reconsideration of such decisions, in each case on the basis of new facts, new evidence, or material error. These internal appeals are in addition to whatever administrative and judicial appeals may exist under French law. Id. ¶ 22.

The Drai Commission will also issue regular public reports that detail its activity as well as the criteria established through commission decisions and the procedures for processing claims. It will also provide a confidential report on the case-by-case disposition of banking claims. That report will be shared with the United States Government. The Drai Commission will also welcome representatives of Holocaust victims and the United States Government for exchanges of information. Id. ¶ 23.

Individuals whose claims cannot be substantiated by the Drai Commission, and whose names cannot be matched to the list of 56,400 account holders prepared by the Mattéoli Mission, but who submit credible evidence that suggests they or their antecedents may have had bank assets that were not restituted, will be referred by the Drai Commission to the Fund. The Fund, capitalized at \$22.5 million contributed by the banks, will make per capita payments of up to \$3,000 to all persons referred to it by the Drai Commission. The Fund is also permitted to make supplemental payments to certain individuals who receive awards from the Drai Commission that are lower than the Fund's per capita payment floor. Interest on the Fund will be used for administrative expenses, and for the costs of an organization

selected by plaintiffs' counsel to help facilitate claims, and will accrue to the benefit of the Fund. Any unused portion of the Fund at the end of the claims period will be contributed to the Foundation. Id. ¶ 24. Pursuant to the Executive Agreement, the Drai Commission has signed a contract with the Fond Sociale Juif Unifié to administer the Fund. Id. Exh B. (Executive Agreement), at Annex B ¶ F.2.

The Foundation serves as the primary mechanism to achieve full disgorgement by banks and other institutions of any remaining assets that were spoliated during World War II and not subject to restitution. The endowment of the Foundation, which is over 2.5 billion Francs, or approximately \$375 million at current exchange rates, was set at the amount recommended by the Mattéoli Mission, and represents the current value of the amount of assets that cannot be conclusively shown to have been reactivated by the rightful owners. Approximately \$100 million of that was contributed by French banks. Id. ¶ 25.

The Foundation will have among its objectives the development of research and dissemination of knowledge about the Holocaust and the victims of the Holocaust, as well as other genocides and crimes against humanity, and support for initiatives to give moral, technical, and financial support to

those who have suffered from persecution and their families. A significant amount of the Foundation's funds will be used for grants to organizations outside France, including in the United States. Id. ¶ 26.

The Foundation will be run by a 25 member Board of Directors, chaired by a Holocaust survivor, Simone Veil. Eight directors represent the French Government, ten represent Jewish groups in France, including the CRIF, and seven (including the Chair, Ms. Veil) are eminent persons chosen by the other directors for their stature and experience in Holocaust-related matters. Id. ¶ 27. The other six eminent person directors were selected at a meeting on February 6 in Paris, and include Elie Wiesel, Israel Singer, the Secretary-General of the World Jewish Congress, Saul Friedlander, a professor of Holocaust Studies at the University of California Los Angeles, Christine Albanel, a French public servant, playwright, and novelist, Claude Lanzmann, a French film-maker known for the film "Shoah," and Samuel Pisar, an international lawyer and Auschwitz survivor.

A key point regarding these institutions is that all victims who suffered injury at the hands of banks who had activities in France during World War II are eligible to apply for restitution. Indeed, during the negotiations, attorneys

representing the victims vigorously represented not only the named plaintiffs in their cases, but also the interests of heirs and others who are similarly situated. Id. ¶ 28.

DISCUSSION

1. Dismissal of this Litigation Would Be in the United States' Foreign Policy Interests

It would be in the foreign policy interests of the United States for the Drai Commission, the Fund, and the Foundation to be the exclusive fora and remedies for the resolution of all claims asserted against banks arising from their activities in France during World War II, including without limitation those relating to "aryanization" or other confiscation of, damage to, or loss of property, including banking assets. See Eizenstat Decl. ¶ 29 and Exh. B at Art. 1(1). Accordingly, the United States believes that all claims asserted should be pursued through the Drai Commission instead of the courts. The United States' interests in supporting the Drai Commission, the Fund, and the Foundation are explained below.

First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. Eizenstat Decl. ¶

30. Over one hundred thousand Holocaust survivors, including many who emigrated from France, live in the United States. Id. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

The Drai Commission, the Fund, and the Foundation are an excellent example of how such cooperation can lead to a positive result. These fora will, without question, provide benefits to more victims, and will do so faster and with less uncertainty than would litigation, with its attendant delays, uncertainty, and legal hurdles. Moreover, the Drai Commission and the Fund will employ standards of proof that are far more relaxed than would be the case with litigation. Litigation, even if successful, could only benefit those able to make out a claim against a bank over which they could obtain jurisdiction in the United States. By contrast, the Drai Commission, the Fund, and the Foundation will benefit all those with claims against banks that were active in France during World War II, regardless of whether such banks are still in existence today. The creation of the Fund by the banks, the commitment by the banks to pay all awards recommended by the Drai Commission, and the participation in the Foundation not only by the banks but by the Government of France and other financial institutions, allow comprehensive

relief for a broader class of victims than would be possible in United States judicial proceedings. Eizenstat Decl. ¶ 31. In addition, the Foundation will be dedicated in part to important efforts to ensure that crimes like those perpetrated during the Nazi era never happen again. Id. ¶ 32.

Second, establishment of the Fund, and recognition of the Draï Commission and the Foundation, helps further the close cooperation between the United States and its important European ally and economic partner, France. One of the reasons the United States took an active role in facilitating a resolution of the issues raised in this litigation is that the United States Government was asked by the French Government to work as a partner with it in helping to make its efforts a success. In recent years, French-American cooperation on these and other issues has been very close, culminating in the joint effort to resolve these complex issues. This has helped solidify the ties between our two countries, ties which are central to U.S. interests in Europe and the world. Id. ¶ 34.

France is the oldest ally of the United States, and a major political partner on the international scene. As a member of the United Nations Security Council, NATO, the European Union, the Organization on Security and Cooperation in Europe, and the

Council of Europe, France plays a critical role on issues that directly affect U.S. national interests. France has collaborated closely with the United States in important areas such as the Middle East peace process, the Balkans, and reform of the United Nations. France is a major member state of the European Union, with which the U.S. has trading relations amounting to more than a trillion dollars a year. We work closely with our French allies over a broad agenda -- political, economic and social -- and need their cooperation in achieving many of our goals, including with respect to Holocaust assets. Given the many challenges the U.S. will face in the future and the importance of the relationship with France, it is essential that we work to diminish any potential irritants between the two countries. Id. ¶ 35.

Third, dismissal of this lawsuit would be in the foreign policy interests of the United States. The participating plaintiffs' counsel, the defendants, victims' representatives, and the French Government are united in seeking dismissal of this litigation in favor of the remedy provided by the Drai Commission, the Fund, and the Foundation, and the United States strongly supports this position. The alternative would be years of litigation whose outcome would be uncertain at best, and

which would last beyond the expected life span of the large majority of survivors. Id. ¶ 36.

In addition, ongoing litigation could lead to conflict among survivors' organizations and between survivors and the banks, conflicts into which the United States and French Governments would inevitably be drawn. There would likely be threats of political action, boycotts, and legal steps against corporations from France, setting back European-American economic cooperation. Id.

Dismissal of all pending litigation in the United States in which Holocaust-related claims are asserted against banks relating to their activities in France during World War II was accepted by all as a precondition to allowing the Fund to make payments to victims. The United States strongly supports the creation of the Fund, and wants its benefits to reach victims as soon as possible. Therefore, in the context of the Fund, it is in the enduring and high interest of the United States to vindicate that forum by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all Holocaust-related claims against the banks. Id. ¶ 37. See also Executive Agreement (Eizenstat Decl. Exh. B) at Art. 1(1).

Fourth, and finally, the Fund, the Drai Commission, and the Foundation are a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Since the liberation of France in 1944, France has made compensation and reconciliation for wrongs committed during the occupation and Vichy regime an important part of its political agenda. Although no amount of money will ever be enough to make up for all Nazi-era crimes, the French Government has over time created significant compensation and restitution programs for Nazi-era acts. The Fund and the Foundation add another \$400 million to that total, over and above whatever claims are ultimately paid through the Drai Commission, and complement these prior programs. Id. ¶ 38.

The United States does not suggest that these policy interests described above in themselves provide an independent legal basis for dismissal. Moreover, in this Statement, the United States takes no position on the merits of the underlying legal claims or arguments advanced by plaintiffs or defendants. Because of the United States' strong interests in the success of the Drai Commission and the Foundation, and in the creation of the Fund, however, and because creation of the Fund is predicated on the dismissal of this litigation, the United

States recommends dismissal on any valid legal ground. In the context of a voluntary dismissal, the Court need not ultimately resolve the validity of the underlying claims and arguments advanced by the parties. As we explain in the next section, it is sufficient if the Court concludes that the requirements of Rule 23(e) of the Federal Rules of Civil Procedure are satisfied.

2. Voluntary Dismissal Under Rule 23(e) Should Be Approved

Because the cases pending before the Court were filed as class actions, they may not be dismissed without the approval of the Court. See Fed. R. Civ. P. 23(e). Before approving the dismissal, the Court is to "inquire into the terms and circumstances" of the dismissal and "ensure that it is not collusive or prejudicial." Diaz v. Trust Territory, 876 F.2d 1401, 1408 (9th Cir. 1989). As no class has yet been certified, however, the court need not "perform the kind of substantive oversight required when reviewing a settlement binding on the class." Id. Rather, Rule 23(e) is satisfied if absent class members are provided such notice of the impending dismissal so as to avoid the potential prejudice from having relied on the pendency of a class action to protect their rights, and if the Court is satisfied that the interests of the class have not been

conceded in order to further the interests of class representatives or counsel. Id. at 1408-09.

In the Executive Agreement, the French Government committed to ensure that the Draï Commission provides appropriately extensive publicity concerning its existence, its objectives, and the availability of funds to pay all legitimate claims. See Executive Agreement (Eizenstat Decl. Exh. B) Art. 1(2). The French Government, as well as the defendant banks and attorneys representing the plaintiffs, further agreed to a set of principles to guide the implementation of the commitment to publicity. Id. at Annex B Exh. 1. These principles include direct notice to Jewish organizations, worldwide publication, and distribution of information via the internet. Id. Of course, the Court will ultimately have to determine whether this "appropriately extensive publicity" provides adequate notice under Rule 23(e). It bears emphasis, however, that the negotiators had those requirements in mind in setting forth the Agreement's "notice principles." Indeed, in a similar circumstance, and evaluating an even less detailed commitment to publicity, one court recently found that there was "no reason not to allow voluntary dismissal . . . without notice" and that "the imposition of notice would be injurious to the very

putative class whose interests the Court must protect." In re Nazi Era Cases Against German Defendants Litigation, 2000 WL 1876641, *20 (D.N.J. Dec. 5, 2000).

As to the question of possible abuse of the interests of absent class members, the Draai Commission and Fund will allow for potential payments to all class members, each of whom is eligible to apply under the same criteria as are any other applicants, including named class representatives. This is one manifestation of the vigorous representation of the interests of absent class members during the negotiations. See Eizenstat Decl. ¶ 12. Indeed, far from sacrificing the interests of absent class members for their own, the class representatives are in fact sacrificing their own interests for the absent class members. While the class representatives and their counsel have been instrumental in helping to create mechanisms through which absent class members have equal opportunity to apply for payments, only the named representatives in the cases before this Court must dismiss their claims with prejudice before applying to the Commission. See Joint Statement (Eizenstat Decl. Exh. A) at ¶ 3(d). There is no evidence to support a conclusion that absent class members' interests were sacrificed to collusive efforts.

3. The Drai Commission, the Fund, and the Foundation Provide a Fair Remedy For Those With Claims Against Banks Arising out of Their Activities in France During World War II

Although substantive consideration of the fairness of the dismissal is not required, see Diaz, 876 F.2d at 1408, the United States has reached the conclusion that the results of the negotiations as embodied in the Drai Commission, the Fund, and the Foundation are fair under all the circumstances. The circumstances that lead the United States to this conclusion are described below.

Given the advancing age of the plaintiffs, it is of the highest importance that their claims are resolved quickly, non-bureaucratically, and with minimum expenditures on litigation. As noted earlier, survivors are dying at an accelerated rate, and the Drai Commission, the Fund, and the Foundation offer the victims of Nazi wrongs who are represented in this case a measure of justice for their past suffering, without additional time-consuming litigation that could delay any recovery beyond many class members' remaining lifetimes. Judge Edward Korman recently reached the same conclusion in approving a settlement between Holocaust survivors and Swiss banks. See In re Holocaust Victim Assets Litigation, 105 F. Supp.2d 139, 149 (E.D.N.Y. 2000); see also In re Nazi Era Cases Against German

Defendants, 2000 WL 1876641 at *20 ("delay is particularly unconscionable when one considers that members of the putative class are aged and dying"). This is the very sort of outcome that U.S. policy seeks to achieve in matters of unresolved Holocaust-era claims.

Other criteria important in evaluating the Draï Commission, the Fund, and the Foundation include their level of funding and procedures for prompt resolution of claims. One of the remarkable aspects of the mechanism set up by the French Government is the commitment by the French Government and the banks that the banks will pay all awards directed to them by the Draï Commission, regardless of the total amount eventually required. See Executive Agreement (Eizenstat Decl. Exh. B) at Annex B ¶ I.D. It is therefore no exaggeration to say that the level of funding of this resolution is unlimited. In addition, the funding of the Foundation - at about \$375 million - is designed to represent complete disgorgement not only of assets that were not returned to their rightful owners, but also of assets that may or may not have been returned, but about which there is simply insufficient information in the historical record.

Of course, whenever one evaluates the level of funding in a resolution such as this one, it is important to consider the words of a Holocaust survivor who spoke in favor of the Swiss Bank settlement, cited by Judge Korman in approving that settlement:

I have no quarrel with the settlement. I do not say it is fair, because fairness is a relative term. No amount of money can possibly be fair under those circumstances, but I'm quite sure it is the very best that could be done by the groups that negotiated for the settlement. The world is not perfect and the people that negotiated I'm sure tried their very best, and I think they deserve our cooperation and . . . that they be supported and the settlement be approved.

In re Holocaust Victim Assets Litigation, 105 F. Supp.2d at 141.

The United States, together with attorneys and other representatives of the victims, also believes that the procedures adopted by the Drai Commission for prompt resolution of claims are fair. Claims are to be evaluated under relaxed standards of proof and paid expeditiously. See Executive Agreement (Eizenstat Decl. Exh. A) at Annex B ¶ I.B. Claimants are permitted to have representatives assist them, and will also be assisted by the French Government if they live outside France and by victims' organizations with access to historical lists of unclaimed accounts. Id. at Annex B ¶¶ I.B, I.G, I.H. Claimants

will be entitled to appeal adverse decisions. Id. at Annex B ¶ I.K. And the Fund will even make payments to individuals for whom there is no substantiation of lost bank assets, but who can merely provide "credible evidence that suggests there may have been such assets." Id. at Annex B ¶ I.F. With these agreements, the Drai Commission and Fund will be able to make speedy, dignified payments to many deserving victims - indeed, as noted earlier, many more than could possibly recover through litigation. In addition, the Drai Commission will issue regular public reports as part of its commitment to operate in a transparent manner. Id. at Annex B ¶ I.J.

In considering the fairness of the Drai Commission, the Fund, and the Foundation, it is also important to consider the numerous legal hurdles and difficulties of proof faced by plaintiffs and the uncertainty of their litigation prospects. Although the United States takes no position here on the merits of the underlying legal claims advanced by the parties, and the Court need not ultimately resolve those questions in the context of a voluntary dismissal, it is beyond dispute that, because of the time elapsed since World War II and the variety of legal defenses to plaintiffs' claims, recovery in litigation is by no means assured. Cf. In re Holocaust Victim Assets Litigation,

105 F. Supp.2d at 148-49; In re Nazi Era Claims Against German Defendants Litigation, 2000 WL 1876641 at *19.

CONCLUSION

The creation of the Drai Commission, Fund, and Foundation not only further the foreign policy interests of the United States, but also provide benefits to the public interest that reach beyond the scope of any single litigation. Other claims for restitution and compensation arising out of Nazi-era atrocities have yet to be resolved. The successful compromise reached in these negotiations, like the German Foundation Agreement, Austrian agreements, and Swiss Bank settlement, can be expected to serve as an example of the advantages for all concerned when the legal and moral claims of Nazi-era victims are dealt with through dialogue, negotiation, and cooperation, instead of prolonged litigation and controversy.

Dated: February 23, 2001 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2001,
the attached Statement of Interest of United States was served
by first class mail on all persons on the attached service list.

David O. Buchholz